

## Message Text

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ACTION EB-11

INFO OCT-01 ARA-16 EUR-25 ISO-00 CAB-09 CIAE-00 COME-00

DODE-00 DOTE-00 INR-11 NSAE-00 RSC-01 FAA-00 SS-20

NSC-07 L-03 PA-04 PRS-01 USIA-15 DRC-01 /125 W

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R 061426Z SEP 74

FM AMEMBASSY LIMA

TO SECSTATE WASHDC 1789

INFO AMEMBASSY OTTAWA

C O N F I D E N T I A L LIMA 7453

EO 11652 GDS

TAGS: ETRN, PE CA

SUBJECT: CIVAIR - BRANIFF AND THE CANADIAN ANALOGY

REFS: LIMA 7358 AND LIMA 7376 (BOTH NOTAL)

1. CANADIAN EMBASSY OFFICER INFORMED US AUGUST 29 THAT HIS COUNTRY'S DESIGNATED CARRIER TO PERU, CANADIAN PACIFIC AIRLINES, INC. (CPAIR), HAD BEEN JOLTED BY AUGUST 14 PERUVIAN SUPREME RESOLUTION WHICH CONTAINS SIGNIFICANT LIMITATIONS ON CPAIR ROUTES IN VIOLATION OF PERUVIAN-CANADIAN 1962 AIR BILATERAL AGREEMENT. OFFICER NOTED THAT BOTH CPAIR AND HIS EMBASSY ARE CONCERNED IN THAT CPAIR HAD PREVIOUSLY AGREED TO PERUVIAN REQUEST THAT IT PAY 20 PERCENT TAX ON ITS FIFTH FREEDOM TRAFFIC, ONLY TO HAVE ITS WINGS CLIPPED.

2. OFFICER EXPLAINED THAT WHEN ALL CURRENT OPERATING PERMITS FOR FOREIGN AIRLINES WERE SUSPENDED IN JUNE 1974, CPAIR HAD REQUESTED TWO ADDITIONAL FREQUENCIES IN ADDITION TO ITS PRESENT TWO VANCOUVER-LIMA FLIGHTS AND SINGLE MONTREAL-LIMA FLIGHT PER WEEK. AFTER A FORMAL PUBLIC HEARING JULY 24 FOR A THREE-YEAR OPERATING PERMIT (UNDER THE CONSULTATIVE COMMITTEE MECHANISM MENTIONED LIMA 7358) CPAIR EXPECTED  
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TO RECEIVE AUTHORIZATION FOR ITS TWO ADDITIONAL FLIGHTS

FROM CANADA WITHOUT ANY FIFTH FREEDOM RESTRICTIONS. TO THE EMBASSY'S CONSTERNATION, HOWEVER, A MINISTRY OF TRANSPORT SUPREME RESOLUTION OF AUGUST 14 NOT ONLY LIMITS CPAIR'S NEW OPERATING PERMIT TO ONE YEAR, BUT ALSO LIMITS ITS WEEKLY FREQUENCIES TO THE PRESENT THREE, AND IT ALSO CONTAINS STILL FURTHER SIGNIFICANT RESTRICTIONS. IN THE CASE OF VANCOUVER-LIMA FREQUENCIES, WHILE THE RESOLUTION AUTHORIZES TRAFFIC TO BUENOS AIRES AND SANTIAGO, IT DENIES FIFTH FREEDOM RIGHTS FOR THESE FLIGHTS. THE SINGLE MONTREAL FREQUENCY PER WEEK MUST, FOR ITS PART, END IN LIMA WITHOUT FLYING ON TO POINTS EAST AND SOUTH.

3. THE SUPREME RESOLUTION, IN AN INDIRECT REFERENCE TO PERU'S RATIONALE FOR SUCH ACTION, CLAIMS THAT VERY LITTLE CPAIR TRAFFIC CONCERNS THIRD AND FOURTH FREEDOMS, AND CPAIR IS THEREFORE UNDERMINING THE REQUIREMENT OF THE CANADIAN BILATERAL WHICH IS PRINCIPALLY TO SERVE TRANSPORT NEEDS BETWEEN PERU AND CANADA AND NOT TO EXPLOIT SUPPLEMENTARY FIFTH FREEDOM ROUTES THROUGH PERU AND OTHER COUNTRIES OF THE REGION. IT ALSO STATES THAT CPAIR'S REQUEST FOR TWO MORE FREQUENCIES IS NOT IN PROPORTION TO TRAFFIC REQUIREMENTS OR THE "AIR SERVICES ESTABLISHED BY THE NATIONAL LINE."

4. CANADIAN EMBASSY SAID THAT THESE RESTRICTIONS MAY CREATE SERIOUS DIFFICULTIES FOR FINANCIAL VIABILITY OF CPAIR SERVICE TO PERU AND THAT OVERALL SHARING ARRANGEMENTS BETWEEN CPAIR AND AIR CANADA FOR THE WESTERN HEMISPHERE ROUTES MIGHT HAVE TO BE RECONSIDERED BY OTTAWA AND THE COMPANIES. IN THE MEANTIME, CANADIAN EMBASSY CONSIDERS SUPREME RESOLUTION UNACCEPTABLE AND IN OUTRIGHT VIOLATION OF 1962 AIR BILATERAL AND PLANS TO REGISTER AN OFFICIAL PROTEST, WHICH WOULD CONSTITUTE THE CANADIAN GOVERNMENT'S FIRST OFFICIAL INTERVENTION IN CPAIR'S CASE HERE. CANADIAN EMBASSY SAID HE WAS INFORMING US OF CPAIR EXPERIENCES BECAUSE HE WAS AWARE THAT BRANIFF HAD NOT PAID THE 20 PERCENT SURTAX ON FIFTH FREEDOM RIGHTS AND HE WANTED US TO KNOW HOW AEROPERU'S "FRIENDS" ARE TREATED, SO THAT WE MIGHT HAVE A CLEAR PICTURE OF HOW THOSE AIRLINES WHICH REFUSE TO PAY GOP'S FIFTH FREEDOM SURTAX COULD

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EXPECT TO FARE IN FUTURE CONSULTATIONS.

5. COMMENT: ONE CAN MAKE THE ARGUMENT THAT THE CANADIAN ANALOGY MAY NOT HOLD IN THE CASE OF BRANIFF, BOTH BECAUSE CPAIR SERVES BUT A FRACTION OF PERU'S INTERNATIONAL TRAFFIC, AND ALSO BECAUSE IN PERUVIAN EYES AT LEAST A FOREIGN GOVERNMENT IS NOT INVOLVED. ON THE OTHER HAND, THOSE WHO HAD A LARGE HAND IN DRAFTING THE CPAIR

SUPREME RESOLUTION MAY WELL WISH TO COOK UP A SIMILAR  
RECIPE FOR BRANIFF, WHITTling AWAY "EXCESSIVE FIFTH  
FREEDOM TRAFFIC" TO "PROTECT" THEIR NEW NATIONAL  
AIRLINE. IN ANY CASE, THE CANADIAN EXPERIENCE IS BOTH  
INSTRUCTIVE AND UNSETTLING FOR FUTURE US-PERUVIAN  
CIVIL AIR RELATIONS.  
DEAN

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